
Public Hearing

before

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

Senate Concurrent Resolution No. 39

(Proposes constitutional amendment to require voter approval when the State borrows money by issuing State independent authority bonds backed by annual appropriations)

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: June 9, 2008
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Barbara Buono, Chair
Senator Paul A. Sarlo, Vice Chair
Senator Sandra B. Cunningham
Senator Dana L. Redd
Senator M. Teresa Ruiz
Senator Brian P. Stack
Senator Stephen M. Sweeney
Senator Shirley K. Turner
Senator Anthony R. Bucco
Senator Philip E. Haines
Senator Leonard Lance
Senator Steven Oroho
Senator Kevin J. O'Toole



ALSO PRESENT:

Catherine Z. Brennan
Howard K. Rotblat
Office of Legislative Services
Committee Aides

Kerry Baynes
Senate Majority
Committee Aide

Rosemary Pramuk
Senate Republican
Committee Aide

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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SENATOR BARBARA BUONO, (Chair): We have the device in place for the public hearing on SCR 39, so I'm about to begin calling individuals up to testify.

MS. BRENNAN (Committee Aide): SCR 39 proposes a constitutional amendment to require voter approval when the State borrows money by issuing State independent authority bonds backed by annual appropriations.

SENATOR BUONO: Thank you.

Is Jeff-- I don't see Jeff Tittel, but he signed up to testify.

Jeff, are you here?

J E F F T I T T E L: (indiscernible) (speaking from audience)

SENATOR BUONO: Okay. You're up.

MR. TITTEL: Jeff Tittel, Director, New Jersey Sierra Club.

And I want to thank the bill sponsors and the Committee for holding this hearing, and welcome the rest of New Jersey to what the environmental community has always done and always supported.

For 37 years, every open space question has always gone on the ballot for voter approval and they've all passed by fairly overwhelming margins, except the last one which was closer because of other issues. And quite frankly, for us, by getting our fiscal house in order -- will mean that there will be more money for open space and other environmental programs. We also have done all our other major programs, when it comes to debt, through constitutional dedication, whether it was fixing parks or cleaning up diesel school busses.

So we believe in it for two reasons. One, we strongly believe that the voters should approve these kinds of spending projects. And two,

by dedicating it, it stops the Treasurer from stealing our money for other purposes. So for us, we see this as a win-win for the people of New Jersey and for the environment.

Thank you.

SENATOR BUONO: Senator Lance.

SENATOR LANCE: Thank you very much.

And I know the purpose of today is a public hearing on this constitutional amendment.

I have had this constitutional amendment in the hopper for seven years. And over the course of the last decade in New Jersey, we have borrowed inappropriately, and we have borrowed almost exclusively without voter approval.

The purpose of this constitutional amendment -- and I want to thank Senator Lesniak, who has become the co-prime sponsor of the amendment -- is to make sure that Article 8 of the New Jersey Constitution is explicitly clear: to require voter approval, regardless of whether the Department of the Treasury borrows the money or an agency of State government borrows the money, such as the Economic Development Authority; and there have been other agencies as well.

If this constitutional amendment had been in our State Constitution over the last decade, the following matters would have had to go to the people for their approval: pension bonds, school construction facilities bonds, stem cell bonds, cigarette securitization bonds (*sic*), Motor Vehicle deficit bonds, tobacco settlement bonds. And I do not mean to be exclusive. There are others that may have had to go, as well, to the people for their approval.

What several communities have done is go to the people. And Mr. Tittel has just pointed out that whenever we have borrowed for the purposes of farmland and open space protection, we have asked the people for their support. And indeed, I have sponsored that type of borrowing. And sales tax revenue has been dedicated for that purpose. And also, regarding the Transportation Trust Fund, we have gone to the people to dedicate a portion of the gasoline tax for those worthy purposes.

And let me say to those who may have concern -- for example, those who favor schools construction. I favor schools construction as well. And I am convinced that the people of New Jersey will approve new borrowing as appropriate, including new borrowing for schools construction, so long as there is accountability, so long as the money borrowed is appropriate for the purposes required.

Last Autumn was an example where there were two questions on the ballot. And they were done the right way. We asked the people for their support. One question was approved and one question was not approved. And perhaps in the question that was not approved we will try again. And that is the appropriate way to go about borrowing.

New Jersey is eleventh in population. We are third in level of State debt. And that debt has almost exclusively occurred over the last decade. This has been a bipartisan problem. There has been inappropriate debt issued by governors of both parties and by legislative chambers controlled by both parties.

I am pleased that Governor Corzine and Chief of Staff Abelow have endorsed the Lance/Lesniak constitutional amendment. And following today's public hearing, which is a requirement contained in the

Constitution, then there will be the opportunity to have this voted upon by each House of the Legislature.

I ask Senate President Codey and Assembly Speaker Roberts to post this important constitutional amendment so that both Houses will have the opportunity to vote on it before we adjourn on June 30th. It will take a super majority: 60 percent of the members in the Senate, and that is 24 votes; and 60 percent of the members in the General Assembly, that is 48 votes, for this constitutional amendment to reach the ballot this year. I am convinced that when it reaches the floor of both Houses, it will be overwhelmingly approved by members of the Legislature. And when it reaches the people -- and I hope that occurs this November -- it will pass by a plurality, I would imagine, of 80 or 85 percent of those voting.

It is clear, based upon the minutes of the 1947 Constitution, that the framers of that Constitution envisioned public approval for all borrowing. And there is a wonderful monograph contained in the proceedings of the 1947 Constitutional Convention to that effect. And let me point out that this provision in our Constitution dates back to 1844, the second New Jersey Constitution, the Constitution that was enacted almost 200 years ago. And that is because in the 1830s and the 1840s, many states across the country got into trouble by issuing bonds without voter approval, and there were some bankruptcies among the states.

What we did in 1947 was ratify, again, what had occurred in 1844. And what we are doing today in this public hearing is ratifying yet again the intention of framers as far back as 1844, and certainly 1947. If we are true to the heritage of our modern Constitution, the greatest constitution among state constitutions across the country, we will

unanimously present this to the people this Autumn. And I am convinced, virtually unanimously, the people will approve this amendment.

Let me say, there is no issue on which I have worked harder or longer in my tenure in the Legislature. There is no issue on which I feel as deeply as I do. We must return to a system of voter approval for borrowing so that we can climb out of the deep fiscal hole in which we find ourselves and move forward united in a bipartisan fashion. And I thank all of the Democratic members of the Legislature, as well as my Republican colleagues, who have become cosponsors of this constitutional amendment.

Thank you, Chairwoman Buono.

SENATOR BUONO: Thank you, Senator Lance.

Thank you, Jeff.

Next, David Sciarra, Education Law Center, opposed.

Good afternoon.

D A V I D G. S C I A R R A, ESQ.: Good afternoon, Madam Chairwoman, members of this Committee.

It's a pleasure to be here.

I think as you all know, the Education Law Center serves as counsel to the over 300,000 school children in the *Abbott v. Burke* case. And our comments today here are informed by our continuing efforts over the years to bring about improvements in deplorable, overcrowded, and inadequate school facilities in poor communities throughout the state, not just in our 31 Abbott districts, but in other low-income communities elsewhere.

This amendment raises a serious constitutional concern, because it would foreclose the future use of contract bonds to finance school

construction. Let me just say, this is a mechanism that the Supreme Court of New Jersey did not come up with on its own. But when it asked the administration at that time -- the Whitman administration -- for a plan to remediate decades of neglect in our urban school buildings, the administration came back with a plan for school construction that included the use of contract bonds to finance those improvements.

The Court accepted that based on the State's representation. The 2000 school facilities law was then passed. And as you know, this method was not just presented by the State and approved by the Court in the Abbott V and Abbott VII decisions, but we have used this mechanism to finance and complete now over 100 school facilities projects in our urban districts. In some communities we've built schools for the first time in 60 or 70 years -- that long needed to be put out of use.

Thus, the contract bonding for school construction is unique. It's there -- and as the Supreme Court recognized in the Lonigan decision -- does not violate the debt limitation clause of the Constitution. Why? Because it's there to implement another, more fundamental constitutional right, the constitutional right of our school children, and particularly our most vulnerable school children, to a thorough and efficient education under the education clause.

Let me just say, we've made significant progress, as I've mentioned, in replacing dilapidated and outmoded school buildings. And I have to make a point that \$2.6 billion of that contract financing went to districts across the state, many of those suburban districts and middle-income districts, to help them with their construction needs. So this is not an Abbott versus non-Abbott question.

But in terms of the urban districts, we've made a lot of progress, but we still have a long way to go. And as many of you know, the Governor's proposing another \$2.5 billion, and Senator Rice has a bill for another \$3.25 billion, for school construction across the state.

I just want to make a point that while we are here today to consider an amendment -- and I agree with Senator Lance, it will no doubt be approved by the voters in November -- it will effectively -- let's be honest -- foreclose the school construction program for poor communities in our state. There is simply no way that the voters of this state are going to approve a \$2.5 billion bond issue focused on poor districts in this state. We could put this bond issue up, we could put it up again, and again, and again, and in the meantime, thousands of children in our poorest districts -- with projects that have been stalled for two years -- are not going to move forward, while at the same time, the debt service requirement allowed for under the school construction -- school facilities program rolls along.

This year you're going to appropriate \$58 million in this budget to finance -- help finance school construction projects in this state, a 75 percent increase in two years. Why? Because in addition to bond financing, the act also provides for debt service of 40 percent or more, but only for those communities who have the ability to pass a local bond.

So we're doing school construction. We're doing school construction every day. We're doing school construction in this budget. But what's happening is that we're going back to the old days, when only those communities who were capable of getting their bonds passed were able to access State funding, while those in our poor, urban communities,

and in other poor districts throughout the state that don't have the fiscal capacity to get their bonds passed, are left out in the cold.

So let me be clear: Support for this amendment, as written, is a vote for inequality, something that, frankly, is very abhorrent to our modern Constitution.

So what do we need to do? We need to explicitly exempt, frankly, school construction from this requirement. Let's make it clear that bonding in order to fulfill the constitutional responsibility of a thorough and efficient education, that runs to our children, needs to be exempt from voter approval. Now, that's not to say that you cannot try to get bonds passed for voter approval, but the option needs to remain available. Because if it's not, we're going to return to the old system of inequity, where the State is funding only that school construction -- only in those communities that have the fiscal capacity and wealth to pass a local bond. That's a past that we simply cannot, in this day, return to.

So I've given you an amendment to this language, that would be amending this constitutional amendment, that would make it clear that bonds necessary to fulfill the State's concomitant obligation under the education clause would be exempt from voter approval, leaving the option open. Because what happens if we cannot get bonds approved? You're still going to have to come up with the financing for schools, because our Court said so. So this option needs to remain on the table.

Listen, I would be happy if someone here were willing to do a pay -- if we were going to do pay-as-you-go for the Abbott districts. I haven't seen anybody proposing \$500 million in this year's budget to restart stalled school construction projects in our urban districts. We could

do it that way, but I don't see any legislator standing up and proposing that we do that.

So my point here is that you must keep this option open. The Court said it's a viable option because it is unique, because it's there to implement the State's obligation under another, more fundamental provision of the State Constitution, the education clause. And I've given you language that would solve this problem. So let's make a different -- chart a different course and make every effort to avoid a clash between provisions within our Constitution and between the Legislature and the Court.

I'm providing today amendatory language which would make certain that SCR 39 does not impair the State's ability to fund needed and constitutionally required school facilities' improvements to bring all of our schools into the 21st century.

So thank you.

And I'd be happy to answer any questions you may have.

SENATOR BUONO: Thank you.

Any questions or comments from the members?

Senator Lance.

SENATOR LANCE: Yes.

Thank you for that testimony, David.

I had suggested, in 2000, when I voted against the schools construction borrowing without voter approval -- and it was passed virtually unanimously, and there were very few votes against it -- I had suggested that we have a pay-as-you-go system. And I do not think that it would have been for all school districts. And you point out that roughly \$2.5 billion of

the \$8.5 billion was for non-urban districts in suburban and rural New Jersey.

If we had confined that program to urban school districts of maybe \$500 million, or \$600 million, or \$700 million a year, it certainly would not have been done all at once -- and certainly I understand the perspective of the sooner, the better. But if we had done that, if we had done, let's say, \$700 million in 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and now in 2008-- Nine years, times \$700 million, would be a great deal of money. In my judgement, it would have been better spent, more judiciously spent.

I recognize your point that you would suggest a further amendment so that borrowing for school construction would not require voter approval. We disagree on that. I'm reading your amendment to the constitutional amendment, your suggestions for change. I respectfully disagree with that, but I certainly respect your opinion and your recognition that this will apply.

Let me also say, however, that the Governor has indicated that he wants to borrow \$2.5 billion for schools construction this Spring. And through the Chair, I believe you and I agree that that would not require voter approval, because that would occur legislatively before the enactment of my constitutional amendment. And the earliest point at which my constitutional amendment would be effective would be after the voters approve, if they were to approve, in November.

So through the Chair, do you and I agree that this constitutional amendment would, in and of itself, have no relevance to what

the Legislature did, if it were to enact -- over my disapproval -- but if it were to enact a \$2.5 billion further borrowing this Spring?

MR. SCIARRA: Yes.

SENATOR LANCE: Thank you.

You've answered my question.

Thank you, Chair.

MR. SCIARRA: I just want to comment though.

There's nothing that prevents the--

Senator, thank you for that comment.

But there is nothing that has prevented the Legislature from doing a pay-as-you-go program. The Supreme Court didn't come up with contract bond financing. It was presented to them, as you well know--

SENATOR LANCE: I agree with that.

MR. SCIARRA: --by the State as the way in which they were going to do it. But that did not prevent this Legislature, in all those years you mentioned, or even today, from putting on the table a \$700 million package of pay-as-you-go school construction. Go ahead and do it.

SENATOR LANCE: I agree with that, through the Chair. It is my fundamental position that it is so much easier for legislative chambers here and in Washington, regardless of political party, to borrow without voter approval. It's not only occurred here, it's clearly occurred in Washington to the tune of a \$10 trillion Federal debt, most of which has been under Republican control in Washington. It is so much easier to borrow against our children's and our grandchildren's future. And I will be happy to work with you on a pay-as-you-go system for urban school children because of the fact that we have to provide new schools for urban

areas. It is something that is incredibly important. And I believe we should move forward in that regard, I hope on a pay-as-you-go basis, or perhaps on a ballot question. And I am not quite as convinced that a ballot question -- appropriately worded, judiciously funded for urban schools -- could not pass statewide.

MR. SCIARRA: Well, I would hope that if it does go on the ballot, all of you will campaign with me -- every single one of you will campaign for that amendment and go to all the districts -- all the places throughout the state to convince the voters that that's necessary. I suspect -- well, I'll just leave it at that.

But my point is this: I'm not saying that you should use contract bond financing. I'm simply saying you need to preserve that option.

SENATOR BUONO: Thank you very much.

Senator Lance, are you complete? (affirmative response)

Thank you.

Next, Mary Ellen Peppard, New Jersey Chamber of Commerce, is in favor of the SCR, with no need to testify.

John Tomicki, League of American Families is opposed.

Good afternoon.

JOHN T. TOMICKI: Thank you, Madam Chair.

Good afternoon.

Members of the Committee, my name is John Tomicki. I'm the Executive Director of the League of American Families. We represent about 100,000 households in the State of New Jersey.

And I wish the gentleman from the Education Law Center was not leaving, because if you listened to what he was saying-- If you put a bond -- albeit a contract bond -- he said for inner-city schools, it will surely fail. What he suggests is an amendment that says, "Well, tuck it in, in language that gives such a thing a blank check." So I agree there with Senator Lance, that that amendment would be fraught with danger. Because he is saying if you put it up as a bond, it will fail. But if you hide it in language-- That's what we're trying to get away from -- in hiding it in language.

So I'd like to start out briefly with my early Italian (*sic*): fiat justitia ruat coelum -- let justice be done, here today, lest the heavens fall.

As Senator Lance said, in one of the most eloquent speeches he ever gave -- was when he was in the Assembly, when the whole issue of the bonds school construction came up. I wish it had been able to be recorded as they are today -- where he set out the actual constitutional parameters. And what he's trying to do with this amendment -- I think it's a step in the right direction.

However, we've already stepped off the cliff into a financial morass of debt, and debt, and debt. And so it's a good step in the right direction, but we've got to get back on solid ground, which is why we are in opposition to this.

All of you have to do due diligence. Very rarely when we testify-- We've been down here testifying as a public policy expert for almost 25 years. I don't run out the fact that I've got my BS in Economics from the Wharton School. I don't run out the fact that I not only have a Bachelors of Law, but also a Doctors of Law, and I specialize in

constitutional law. And Senator Lance is aware of that, and we both have mutual respect for that approach.

He and I may be the only two in the room that have read the various stages of not only the 1947 Constitution and the monographs therein, but also 1844. And Leonard is much more of an expert on that -- if I could use his first name.

Senator Lance is trying to deal, in effect, directly and indirectly with two problems in the Constitution. One is the question of independent authorities. He has taken that issue to court, and he won the day. Both parties-- It's the shame on both parties that they have gone forward and allowed that process to, in effect, damage the credit reputation of this state.

In later Italian, *nota bene*. And what you must do -- read in the statement attached to the bill. It says on the back -- note it -- "Tax supported bonds had totaled \$12.2 billion as of June 30, 1998, which has increased to about \$27 billion as of June 30, 2007. Only \$11.9 billion of this \$27 billion is voter approved debt."

In other words, more than half, Senator -- and you were correct -- \$15 billion of the debt burdening our families, and our children, and our grandchildren has not been voter approved. So this is a step in the right direction.

But it creates two problems. You have two glaring exceptions on that independent authority. If we're going to go forward, Senator, to the public in saying, as we are, we the taxpayers can no longer be an ATM machine for the State government of the State of New Jersey -- whether it be the Executive Branch, or the Legislative Branch, or in fact for the Judicial Branch-- We are no longer able to be the ATM machine. So you've got to

remove those two exceptions. Make it clear to the public-- The public will, as Senator Lance pointed out-- In the last election cycle, they approved one and disapproved another -- allowed the people to clearly stay within the clear language, until the Court and the Legislature, shall we say, twisted around the edges and went around a few curves.

Too often our Supreme Court has legislated from the bench. This Senate -- not all the members here -- actually approved and confirmed a gubernatorial appointment where the candidate stood -- sat in the other room and said-- She, as a candidate, said that she believed she was going to be put on the bench to fill in the gaps left by the Legislature. That is not the purpose of a supreme court.

What we urge you to do is to make a very clear language. Stay within the clear meaning of the original Constitution, as Senator Lance had pointed out. Anything over that constitutional amendment has to go to the public. And I believe the public can be trusted for what we're dealing with in the inner-city schools.

I think Senator Lesniak's legislation that he's doing on school scholarships is another good step in the right direction.

But the problem relative to the two exceptions-- It's very difficult language to understand. I think you're giving the Supreme Court an opportunity to again legislate from the bench. But as to the other one, it deals with the issue of *Robinson v. Cahill* and *Abbott v. Burke*, and its progeny.

I urge all of you -- and since this is a recorded hearing -- to do the due diligence and read the article by Peter J. Mazzei in the *Rutgers Law Journal*, Volume 38, Issue No. IV, starting on Page 1,087. Therein, he goes into a very good historical analysis of: what did it mean to those words

thorough and efficient system? It always troubled me. I am personally grateful to him, as a researcher, to have taken the time over the last several years, apparently, to collect all the data and then place it into a peer-review article in *Rutgers Law Journal* this year. In it, he shows clearly what was meant by *thorough and efficient*. The New Jersey Supreme Court, in effect, stated in their decisions there is no history. Well, there was a history, had they taken the time to look at it.

And not to go through all the readings, I'd just like to close discussion of that article with what he invites everyone to do -- that the Court itself should reexamine their decisions in light of this historical context. He said, in fact, that the State would collect revenue from a uniformly level, statewide, two mill property tax, which would be deposited in a State school fund and distributed to school districts on the basis of the population of school-age children attending public schools in each school district.

It did not mean, in any manner, shape, or form, what the Court has done in legislating from the bench. So the discussion that was held here a few minutes ago about what you have to do based upon a Court mandate-- We believe if you put clear language in -- and the public cries out for you, ladies and gentlemen, Senators, to have the courage to do the right thing at this time and clearly set forth the parameters in saying: Anything to the contrary, notwithstanding, the Court must stop legislating from the bench telling us what we should spend and what we should not spend, what we should go into debt for and what we shouldn't.

So Senator Lance is going in the right direction. But we believe it needs more and it falls short.

I think you have vague language. I think you have to clear up those two exceptions. I think you should make it very, very clear. We urge you and beg you now to have the courage to do the right thing at the right time, and then the credit will go to all of you Senators, regardless of party, that are sitting here today.

Thank you so much. And our prayers go forward to you.

SENATOR BUONO: Thank you, John.

Any questions or comments? (no response)

Thank you.

Next, Art Maurice, NJBIA: no need to testify, in support.

And our last person who has signed up is Thomas Yarnall Jr., of Cherry Hill.

And it looks as though you have qualified support, but you want some modifications. So I'm sure you'll explain that to the Committee.

THOMAS V. YARNALL JR.: Thank you, Madam Chair.

The handout -- I hope you all have it, because that will save a lot of words. I'm showing types of -- typical types of State debt on my handout. I hope everyone has that one-page handout. Yes? (affirmative responses)

And I call your attention to-- This is another aspect of clarification, or clear law, that I'm approaching, Senator Lance.

Line 8, Page 5: It says here, "By issuing certain types of--" And my request of the Committee is that you take into consideration specific types and state them in the resolution.

How is that for quick?

SENATOR BUONO: That was very quick. Thank you very much.

Any questions from the Committee, any comments?

Senator Lance.

SENATOR LANCE: Thank you very much, Madam Chair.

I believe the hearing has been enlightening.

It is my intent to prohibit debt without voter approval, not only issued by the State Department of the Treasury, but by various authorities, such as the Economic Development Authority and other authorities.

The exceptions that are contained in the constitutional amendment are of long-standing duration. For example, the Turnpike Authority would still be able to issue debt specific to the Turnpike Authority for improvement of the Turnpike, based upon tolls collected by the Turnpike Authority, specific for the purposes of road construction or improvement.

The other exception is, for example, the constitutional dedication for the Transportation Trust Fund -- the constitutional dedication of a portion of the gasoline tax. The Transportation Trust Fund borrows from that constitutional dedication. The constitutional dedication has occurred by the people themselves.

Open space funding: We have borrowed for open space and farmland preservation. We have done that by constitutional amendment, dedicating sales tax revenue. Again, the people themselves have determined that.

But let me repeat that this constitutional amendment would prohibit the type of borrowing that has occurred over the last decade: tobacco bonds, school construction bonds, pension bonds, bonds for general operating expenses. And let me reiterate, I think we are in agreement that we want to help urban schools. And I look forward to those courageous advocates for urban schools. I would hope we could go to a pay-as-you-go system. But if we cannot, I have confidence in the people themselves that if such a matter were placed on the ballot, we could convince the people of the importance of that.

And so that type of matter would be prohibited, tobacco bonding would be prohibited, pension bonding would be prohibited. And I believe, on a bipartisan basis, this is the year that the Legislature is going to ask the people for their approval.

I again want to give credit to Senator Lesniak, to the other co-sponsors in both Houses of the Legislature; to Governor Corzine and Chief of Staff Abelow, who have courageously supported this. After a period of roughly seven years, I hope I am seeing light at the end of the tunnel. I hope this can be voted upon by both Houses before we adjourn in June. I hope it can receive at least 24 votes in the Senate and 48 votes in the Assembly so that it can move forward for the people's approval themselves.

Thank you, Senator Buono.

SENATOR SARLO: Thank you, Senator Lance.

That concludes this hearing.

Senator Lesniak, did you want to speak on this?

SENATOR RAYMOND J. LESNIAK: I do.

Thank you, Mr. Chairman.

SENATOR SARLO: You may speak right from there, Senator.

SENATOR LESNIAK: This is actually not an easy thing for us to do. I mean, it's easy for us to follow Senator Lance's lead, which I agree with, and prohibit borrowing without voter approval. Because we've certainly got us in a mess without such a prohibition.

At the same time, we have to recognize that we have a constitutional obligation and indeed a moral obligation to provide school facilities for our children that are conducive to an appropriate education environment.

I don't know how we're going to do that, quite frankly, if we were to put something on the ballot and the voters rejected it. I don't know. I do know we have to, and we have to find a way to do it. And it's not going to come out of the current budget, because the current budget is difficult even without that obligation.

So we do have a grand purpose here. Senator Lance got the ball rolling. I was pleased to join it. And we just have to put our nose to the grindstone and figure out a way. Because these schools must be built, they have to be built. And notwithstanding the Supreme Court, we have a moral obligation to get them built. So I think we should support the bill.

And I thank you for putting it on the agenda.

Thank you, Mr. Chairman.

SENATOR SARLO: Thank you, Senator Lesniak.

That concludes the public hearing on Senate resolution--

There is no vote necessary.

(HEARING CONCLUDED)

APPENDIX



Education Law Center

Standing Up for Public School Children

TESTIMONY OF EDUCATION LAW CENTER ON SENATE CONCURRENT RESOLUTION NO. 39 JUNE 9, 2008

ELC serves as counsel to the school children Abbott v. Burke, and our comments are informed by our efforts to bring about improvements in deplorable, overcrowded and inadequate school facilities in poor communities throughout the state.

SCR 39 raises a serious constitutional concern: the amendment would appear to foreclose the future use of contract bonds to finance school construction, a mechanism expressly authorized by the Supreme Court in Abbott V (1998); implemented in the Educational Facilities Construction and Financing Act of 2000; and upheld in the Lonegan v. State of New Jersey decision of 2002.

As you know, contract bonds issued under EFCFA have financed urgently needed school construction projects in not just urban districts, but districts across the state. This financing method was presented by the State and approved by the Court in Abbott V and Abbott VII (2000) as the means for the State to meet its obligation to ensure a thorough and efficient education to school children under the Education Clause of the Constitution.

Thus, the EFCFA contract bonds are unique, and the Supreme Court has recognized in Abbott and Lonegan that they do not violate the Debt Limitation Clause of the Constitution.

While we have made significant progress in replacing dilapidated and outmoded school buildings, there remain unmet needs that will require additional bond financing in future years. The State estimates those unmet needs in urban districts at \$12 billion, and we are awaiting similar estimates of need across the state, especially in lower wealth districts that have been unable to raise construction funds through local bonding.

In the meantime, while State support for school construction in poor districts would be placed in serious jeopardy under SCR 39, the State funding of projects in wealthier districts just rolls on. For FY09, the State will provide \$58 million in building aid, an increase of 75% in just two years. So if you're wealthy enough to pass a bond, regardless the need for the project, the State will fund it. But if you're a student in a decrepit building in a poor district, that's just too bad.

Support for SCR 39 as written is a vote for inequality, something abhorrent in our constitution.

Let's chart a different course and make every effort to avoid a clash between provisions within the Constitution, and between the Legislature and the Court. I am providing today amendatory language which will make certain that SCR 39 does not impair the State's ability to fund needed, and constitutionally-required, school facilities improvements.

We stand ready to work with this committee to expeditiously resolve this problem.

b. On and after the date on which this subparagraph b. becomes part of the Constitution, the Legislature shall not enact any law that, in any manner, creates or authorizes the creation of a debt or liability of an autonomous public corporate entity, established either as an instrumentality of the State or otherwise exercising public and essential governmental functions, which debt or liability has a pledge of an annual appropriation as the ways and means to pay the interest of such debt or liability as it falls due and pay and discharge the principal of such debt, unless a law authorizing the creation of that debt for some single object or work distinctly specified therein shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. Voter approval shall not be required for any such law **providing for the maintenance and support of a thorough and efficient system of public schools required by Article VIII, Section IV, Paragraph 1 of this Constitution** or providing that the ways and means to pay the interest of and to pay and discharge the principal of such debt or liability shall be subject to appropriations of an independent non-State source of revenue paid by third persons for the use of the single object or work thereof financed thereby, or appropriations of a source of State revenue otherwise specifically authorized by the voters pursuant to another paragraph of this Constitution to be appropriated for debt financing purposes. No other paragraph of this Constitution for any other purpose whatsoever shall be construed as providing any other exception for voter approval of any law described in this subparagraph.

Typical Types of State Debt

RANs

Revenue Anticipating Notes
 Short-term renewable notes
 Not ratified by voters
 Full faith backing of taxing power*
 Repaid by following year revenues

GOBs

Government Obligation Bonds
 Authorized by law
Ratified by voters
 Primarily for capital improvements

COPs

Certificates of Participation
 Capital leases
 Legislative appropriations
 No voter approvals
 Construction and equipment funding

AKAs

State Agency Debts
 State Guaranteed Debts
 State Moral Obligation Debts

Capital Budgeting Commission 06 Members
 Cryan and Rousseau

01 to 06 Budget Increases of 57%
 \$21 billion to \$33 billion

Debt reconciliation to CAFR >>>>>>

June 2007 List of non GOB Debt

| | |
|----------------------------|----------------|
| Eco Dev Authority | \$12 billion |
| Trans Trust | \$ 8 billion |
| Preservation Trust | \$ 1.2 billion |
| Ed Facil Auth | \$ 0.7 billion |
| Bldg Authority | \$ 0.6 billion |
| Sports & Expo Auth | \$ 0.6 billion |
| Health Care Facil Fin Auth | \$ 0.3 billion |
| So Jersey Port Auth | \$ 0.1 billion |
| Capital leases | \$ 0.4 billion |
| County College Bonds | \$ 0.2 billion |
| Marine Lab | \$ 5 million |
| Line of credit | \$ 53 million |

| | |
|---------------------|-----------------------|
| Total RANs and COPs | \$24.15 billion |
| GOBs | \$ 2.8 billion |
| Other Debt | \$2.7 billion |
| TOTAL DEBT | \$29.7 billion |

About 40% is callable
 Defeasement approach not required
 \$650 million of debt can be retired

Additional Obligations of \$8.4 billion

* = Taxpayers have no legal obligation to pay when full faith is not pledged by ratification